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October 8, 2012

SENT VIA E-MAIL

Freedom of Information Officer (6MD-OE)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
r6foia@epa.gov

Re: Jackpile-Paguete Mine Site FOIA Request, RIN: 06-FOI-00507-12

Dear Ms. Lane:

Atlantic Richfield Company ("AR") is writing in response to the EPA's September 18, 2012 First Partial Response to AR's FOIA Request relating to the Jackpile-Paguete Mine Site ("Jackpile" or "Site"). Following our review of those documents, and a conversation with Stephen Capuyan on September 25, 2012, we would like to clarify AR's FOIA request, specifically with respect to documents that the Pueblo of Laguna ("Pueblo") have agreed to provide EPA under the 2010 EPA-Pueblo MOU (the "MOU").

Pursuant to the Information and Data Sharing provisions of the MOU (Section II.D), the Pueblo agreed to cooperate with EPA by providing records in the Pueblo's possession. Among the records produced to EPA are records which "relat[e] to past uranium mining and existing contamination, including technical data, leases, agreements, maps and other documents that the parties agree are pertinent to assess the impacts of uranium mining and to ensure the protection of human health and the environment." (Section II.D.2). More specifically, the Pueblo agreed to provide "information provided to or received from the Department of Interior Bureau of Indian Affairs (BIA), copies of agreements with potentially responsible parties, and information about past remediation efforts," as outlined in the MOU. Such records would include the mining and reclamation-related documents which were provided to the Pueblo at the time of the 1986 Lease Termination Agreement by Anaconda.

We understand that EPA has obtained a significant number of documents from the Pueblo related to the Site, but that the Pueblo produced the documents to EPA under a confidentiality claim. Section II.D.1. of the MOU states that "no confidential trade secrets, commercial, or financial information of the Pueblo [...] shall be made available to the public by the EPA, except in compliance with 40 C.F.R. Part 2, Subpart B." AR does not seek the type of confidential

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information characterized in Section II.D.I in this FOIA request, such as trade secrets, the Pueblo's financial information, or data concerning the health of individual Pueblo citizens.

To clarify AR's FOIA request, AR does not seek Pueblo records that may lawfully be described as confidential or privileged. The records described in Section II.D.2 of the MOU and referenced above are neither confidential nor subject to confidential treatment under FOIA's Exemption 4, 5 U.S.C. § 552(b)(5), or EPA regulations protecting "confidential business information." 40 CFR §§ 2.201-2.215. AR's request does not seek disclosure of "business information," which "pertains to the interests of [a] business," but analyses, reports and other documentation prepared specifically for disclosure of mine operation and reclamation activities to third parties. 40 CFR § 2.201(c). Many of these documents have been disclosed to other persons in the past, including documents that were provided to the Pueblo by Anaconda and government agencies. The disclosure of these documents to AR would not cause substantial harm to the competitive ability of the Pueblo. 42 U.S.C. § 9604(e)(7)(E).

In addition, CERCLA does not provide for confidentiality with respect to the requested documents because they relate to hazardous substances at the Site, including the location of disposal of hazardous substances, monitoring data and analysis, hydrogeologic and geologic data, and/or groundwater monitoring data. *Id.* at § 9604(e)(7)(F). As such, AR maintains its request that records received by EPA from the Pueblo be produced along with the other requested records. To the extent the Pueblo have asserted a confidentiality claim where none is supported under law, EPA is obligated to produce such documents. We look forward to receipt of the records described in AR's July 27, 2012 FOIA request.

If you have any additional questions, you may contact me at the following telephone number: 303-892-7382.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Vilsack", with a long horizontal flourish extending to the right.

Douglas J. Vilsack

for

DAVIS, GRAHAM & STUBBS LLP

cc: Brian S. Johnson
James L. Lucari
William J. Duffy
Stephen Capuyan (EPA)
Pamela Travis (EPA)